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FAA Aide Fired in Morals Case Rehired With \$26,000 Back Pay

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Staff Reporter

Federal Aviation Agency Administrator Najeeb E. Halaby has personally ordered the reinstatement of an FAA employee who was discharged because he admitted committing several homosexual acts as a youth.

Halaby announced the reinstatement yesterday so that "justice can be done." The Administrator said psychiatric and security examinations have established that the employee is "fully rehabilitated and competent . . . and should not be scarred for life for a youthful mistake."

The re-instatement ended what would have been the first Supreme Court test of discharge for pre-employment acts not related to government service with the added touch of a controversial moral and security risk issue.

The discharge had been upheld by the Civil Service Commission, the U.S. District Court and the U.S. Court of Appeals under a provision which permits discharge "to improve the efficiency of the service."

Gets \$26,000 Back Pay

After the Supreme Court unexpectedly agreed to hear the case last February, the Solicitor General's office and the Civil Service Commission pushed for an out-of-court cash settlement rather than permit the Supreme Court to rule on the issue.

But the FAA employee refused to accept anything less than full-reinstatement in order to vindicate his reputation. He has been married for some years and has three children. He will be reinstated with back pay totaling

\$26,000 and all accumulated pension rights, less his earnings as a truck driver and warehouse helper in the meantime. He will be trained to assume his former GS-8 position as a clerk in the Air Control Center in Denver at \$7,070 a year.

The government had conceded that the homosexual acts were isolated incidents in his youth and that the employee has had a normal sex life since 1950.

"I am not prepared to say," Halaby said, whether or not the FAA made a mistake back in those days with their influence of McCarthyism and with an undeveloped personnel set-up. . . . I think the Agency was justified under the then existing circumstances.

"After a long personal interview with the man and after seeing the results of the examinations, I have assured myself that the right thing to do is to reinstate him."

"My Neck Is Way Out"

Referring to criticism that might arise, Halaby added, "Certainly my neck is way out and I am pleased to have it out in this type of case."

The case started in February, 1960, when the FAA removed the employee on charges of past homosexual conduct and of smoking marijuana cigarettes, based on information obtained from the CIA.

After four years in the Air Force, the employee had worked for CIA and was given a lie detector test for top security clearance. In the test he admitted committing four homosexual acts, some of them for money, when he admitted smoking five marijuana cigarettes in 1952.

The employee who was hired by FAA in 1956 admitted to the FAA that the CIA report was correct. The FAA filed charges under conduct "to improve the efficiency of the service." The particular section cited "criminal, infamous, dishonest, immoral or notoriously disgraceful conduct."

Affirmed by Court

After being affirmed by the Civil Service Commission, its Board of Review and the U.S. District Court, the U.S. Court of Appeals also affirmed it in March 1963 in a majority opinion by Judge George T. Washington which said:

"The ground for disqualification . . . cannot logically be read to refer solely to conduct occurring after Government employment has commenced . . . It must have included pre-employment conduct."

Circuit Judge J. Skelly Wright issued a blistering dissent noting: "Using some unfortunate adolescent acts as its springboard, the court drives a gaping hole in the wall of protection which has surrounded Civil Service workers for almost 100 years."

"For the first time in the 50 years of the Lloyd-La Follette Civil Service Act which first limited the power of discharge, a court has held that a permanent Civil Service worker . . . can be fired for pre-employment acts unrelated to his Government service."

" . . . If this ruling remains law, no Civil Service job is safe. Any Civil Service worker, who becomes 'persona non grata' with the powers that be, may have some historical research done on his pre-employment background in an effort to turn up something disqualifying.

"Even the innermost secrets of the Civil Service worker, long buried and known only to himself, may be the subject of inquiry."

The employee was represented by Joseph Forer and David Rein of Washington. Rein said: "We are pleased to see this wrong righted."